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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,880	08/17/2005	Matthias Dammers	3988-045910	7396

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EXAMINER
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ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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03/05/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/519,880	<b>Applicant(s)</b> DAMMERS, MATTHIAS	
	<b>Examiner</b> NIKI M. ELOSHWAY	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 25-50 is/are pending in the application.
- 4a) Of the above claim(s) 36-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-35 and 46-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Election/Restrictions*

2. Claims 36-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 22, 2009.

3. Applicant's election without traverse of Group I, claims 25-35 and 46-50 in the reply filed on April 22, 2009 is acknowledged.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 25, 26, 28, 34, 35 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon et al. (U.S. 5,156,295). Gordon et al. teach a cap, shown in figures 4 and 5, for a laminated carton packaging, shown in figure 8, wherein the cap is constructed of plastic, as disclosed in col. 3 lines 22-26. A spout element 64 having a screw thread 74 and a spout opening designed to be closed by a screw cap 78. Regarding the limitation that the spout element is deep drawn, it has been held that "even though product-by-process claims are limited by and defined by the process, determination of patentability is

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based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. 5,156,295) in view of Kennedy (U.S. 4,643,330). Gordon et al. disclose the claimed invention except for the threads being interrupted. Kennedy teaches that it is known to provide a spout with interrupted threads (see element 32). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap assembly of Gordon et al. with the threads being interrupted, as taught by Kennedy, in order to allow for drainage of moisture from the area between the spout and cap, as disclosed in Kennedy.

8. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. 5,156,295) in view of DE3832412. Gordon et al. disclose the claimed invention except for the plastic being a multilayer foil. DE3832412 teaches that it is known to provide a spout made of multilayer foil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap assembly of Gordon et al. with the material being a multilayer foil, as taught by DE3832412, in order to provide the spout with gas barrier layers.

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9. Claims 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. 5,156,295) in view of Hargraves et al. (U.S. 4,966,780). Gordon et al. disclose the claimed invention except for the angled edge, outward pitch and downward tapering periphery. Hargraves et al. teach that it is known to provide a cap with an angled edge, outward pitch and downward tapering periphery (see figure 1A). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cap assembly of Gordon et al. with the cap having an angled edge, an outward pitch and downward tapering periphery, as taught by Hargraves et al., in order to allow the cap to be used as a measuring cup.

10. Claims 47, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. 5,156,295) in view of Bouraoui et al. (U.S. 5,848,748). Gordon et al. disclose the claimed invention except for the plastic and aluminum layers of the packaging body. Bouraoui et al. teach that it is known to provide a packaging body with a carton/plastic/aluminum laminate (see col. 4 line 61 through col. 5 line 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the package assembly of Gordon et al. with the packaging body being made of a carton/plastic/aluminum laminate, as taught by Bouraoui et al., in order to construct a package which has a moisture barrier and gas barrier.

11. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (U.S. 5,156,295) in view of Bouraoui et al. (U.S. 5,848,748) and DE 3308112. Gordon et al. disclose the claimed invention except for the plastic and aluminum layers of the packaging body and the plastic bottom. Bouraoui et al. teach that it is known to provide a packaging body with a carton/plastic/aluminum laminate (see col. 4 line 61 through col. 5 line 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the package assembly of Gordon et al. with the packaging body being made of a carton/plastic/aluminum laminate, as taught by Bouraoui et al., in order to construct a package which has a moisture barrier and gas barrier.

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DE 3308112 teaches that it is known to provide a packaging body with a plastic bottom. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified package assembly of Gordon et al. with a plastic bottom, as taught by DE 3308112, in order to increase the strength of the bottom.

### ***Response to Arguments***

12. Applicant's arguments filed November 9, 2009 have been fully considered but they are not persuasive. Applicant argues that Gordon does not teach a circumferential angled edge. The Examiner disagrees with this position. The circumferential angled edge of Gordon et al. is the portion of the bottom surface that angles upwardly 90 degrees. This portion is located between lead lines 70 and 82 in figure 9.

13. It is also the examiner's position that the Gordon et al. spout has a planar upper surface.

### ***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/  
Supervisory Patent Examiner, Art Unit 3781

/Niki M. Eloshway/  
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Examiner  
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NME